

BY

Clower

S.B. NO. 1238

A BILL TO BE ENTITLED

AN ACT

relating to the rate-making authority of the Texas Water Rights Commission; amending Section 6.056, Water Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 6.056, Water Code, is amended to read as follows:

"Section 6.056. RATE-FIXING POWER.

"(a) The commission shall fix reasonable rates for the furnishing of water for any purpose mentioned in Chapter 5 or 6 of this Code as provided in this section.

"(b) The term 'political subdivision,' when used in this section means an incorporated city, town or village, counties, river authorities, water districts, and other special purpose districts.

"(c) The term 'governmental entity,' when used in this section means an incorporated city, town or village, or a water or utility district which provides retail water service within the boundaries of an incorporated city, town or village.

"(d) The term 'regional municipal water utility' when used in this section means an incorporated city which holds a permit to appropriate public water and provides wholesale treated water service to multiple governmental entities under 'exclusive water contracts' as such term is herein defined.

"(e) The term 'exclusive water contract' when used in this section means a contract between an incorporated city and a governmental entity whereby the incorporated city agrees to sell wholesale treated water to the governmental entity for a term of 20 years or more and by the terms of such contract the governmental entity is obligated to purchase all the treated surface water that is used, consumed or conveyed in and/or by the governmental entity exclusively from such incorporated city and the incorporated city selling the treated water retains the exclusive right and power to set revised rates from time to time.

"(f) The term 'permanent water utility customer,' when used in this section means (1) any governmental entity which has an exclusive water contract with a regional municipal water utility; (2) any governmental entity that is receiving wholesale treated water service from a regional municipal water utility if such governmental entity will agree to an exclusive wholesale treated water contract with the regional municipal water utility for such service within the service area of the regional municipal water utility, as such service area is determined by the commission, on the same basic terms as the terms of any existing exclusive wholesale treated water contracts between the regional municipal water utility and other permanent utility water customers, and; (3) any governmental entities which the regional municipal water utility may at any time agree or be directed by the commission to provide wholesale treated water service under an exclusive water contract.

"(g) For the purpose of regulating rates and services so that such rates may be fair, just, reasonable and nondiscriminatory, and the services adequate and efficient, the commission shall have exclusive original jurisdiction over wholesale treated water rates, operations and services provided by a regional municipal water utility to a permanent water utility customer.

"(h) Every regional municipal water utility shall file with the commission schedules showing all rates which are in force that the regional municipal water utility is charging permanent water utility customers for wholesale treated water.

"(i) Rates fixed by the commission that a regional municipal water utility may charge a permanent water utility customer shall not be unreasonably preferential, prejudicial or discriminatory, but shall be sufficient, equitable, and consistent in application to each permanent water utility customer and the city that is the regional municipal water utility.

"(j) In any proceeding involving any proposed change of rates that a regional municipal water utility may charge permanent water utility customers, the burden of proof to show that the proposed change, if proposed by the regional municipal water utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be on the regional municipal water utility.

"(k) Whenever the commission, after reasonable notice and hearing, on its own motion or on complaint by a permanent water utility customer, finds that the existing rates of any regional municipal water utility

for wholesale treated water service are unreasonable or
in any way in violation of any provision of law, the
commission shall determine the just and reasonable
rates to be thereafter observed and in force, and shall
fix the same by order to be served on the regional
municipal water utility, and such rates shall constitute
the legal rates of the regional municipal water utility
until changed as provided in this section.

"(1) No regional municipal water utility may
make changes in its rates for permanent water utility
customers except by filing a petition for rate adjust-
ment with the commission. The petition for rate adjust-
ment shall include schedules and a statement specifying
in detail each proposed change, the effect the proposed
change is expected to have on revenues and such other
information as may be required by the commission's
rules and regulations. A copy of the petition for rate
adjustment shall be mailed or delivered to the appro-
priate officer of each affected permanent water utility
customer. The commission shall hold public hearings to
determine the propriety of such proposed change in
rates after reasonable notice. If the commission fails
to make a final determination of rates within 180
days from the date the petition for rate adjustment is
filed with the commission, the regional municipal water
utility concerned may put a changed rate, not to exceed
the proposed rate, into effect upon written assurance
to the commission, as prescribed by the commission, a
refund will be made of all sums collected under such
rates in excess of the rates finally ordered by the
commission plus interest at the current rate as deter-
mined by the commission. Upon a final determination,

the commission shall determine the level of rates to be charged by the regional municipal water utility for the service to its permanent water utility customers and shall fix the same by order to be served upon the regional municipal water utility; these rates are thereafter to be observed until changed, as provided by this section.

"(m) The commission shall fix rates under this section that a regional municipal water utility may charge a permanent water utility customer using either the 'cash basis' or the 'utility basis' as those terms are herein defined. The commission shall determine, based upon the historic relations of the parties and the past methods of setting rates by the regional municipal water utility, whether the 'cash basis' or the 'utility basis' is the more just and equitable basis to be used. The commission shall not under any circumstances fix rates at a level that would be less than required under the 'cash basis.' The terms 'cash basis' and 'utility basis' are defined and shall be applied by the commission as follows:

(1) Under the 'cash basis' rates shall be fixed at a level that will permit the regional municipal water utility to pay all operating, maintenance, depreciation, replacement, betterment and interest charges necessary and attributable to providing service to permanent water utility customers and to establish and maintain an interest and sinking fund sufficient to pay any outstanding indebtedness incurred for the purpose of purchasing, constructing or improving the facilities used for supplying service. Additional profits shall be

allowed to the regional municipal water utility based upon the need for such additional profits as a condition to incurring indebtedness for the purpose of providing service to its permanent water utility customers.

(2) Under the 'utility basis' rates shall be fixed at a level that will permit the regional municipal water utility to recover its reasonable operating expenses together with a fair return upon the original cost of its invested capital which is used and useful in rendering service to its permanent water utility customers. The rate of return is the revenue earned by a regional municipal water utility from its operations in providing the service, over and above properly allocable operating expenses, expressed as a percentage of the original cost of invested capital. The return shall be reasonably sufficient to assure confidence in the financial integrity of the regional municipal water utility's service operation and shall be adequate, under efficient and economical management, to maintain its credit and attract the capital necessary for the proper discharge of its duties. The commission shall not prescribe any rates which will yield more than a fair return upon the original cost of the invested capital used and useful in rendering service. In determining the amount of revenues necessary to satisfy these requirements, the commission may consider inflation, deflation, quality of service being provided, growth rate of the service area and the need for the regional municipal water

utility to attract new capital. In each case, the
commission shall consider the cost of capital to
the regional municipal water utility.

"(n) The commission in fixing rates in all other
cases under this section may use either the 'cash
basis' or the 'utility basis' as defined in Subsection
(1) hereof or any other accepted basis for fixing rates
as may be determined by the commission to be appropriate.
In no case shall the commission fix rates that a poli-
tical subdivision may charge for service at a level
that would be less than that required under the 'cash
basis' as defined in Subsection (1) hereof.

"(o) The commission shall provide by rules not
in conflict with the provisions of this section, for
petitioning for rate review by any person complaining
of rates for the furnishing of water under this section.

"(p) The commission may establish interim rates
and compel service during the pendency of a rate pro-
ceeding.

"(q) The commission may prescribe the terms and
conditions of service.

"(r) The commission may order a refund from the
date a petition for rate review is received by the
commission of the difference between the rate actually
charged and the rate fixed by the commission, plus
interest at the current rate as determined by the
commission.

"(s) The commission may tax all costs directly
incurred by the commission in any rate proceeding here-
under to the parties on a fair and equitable basis.
All such costs paid to the commission shall be paid
into the general revenue fund.

"(t) Notwithstanding any provision of this section, the commission shall not have jurisdiction to review or fix rates that an incorporated city may charge on a retail basis to the public, except as may elsewhere be provided by law."

Section 2. No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this Act.

Section 3. Nothing herein contained shall be construed to repeal or amend the Public Utility Regulatory Act, Article 1446c, Vernon's Texas Civil Statutes.

Section 4. The importance of this legislation, the crowded condition of the calendars in both houses, and the confusion concerning the applicability of Texas Water Code Section 6.056 to municipalities and other political subdivisions create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Relating to the rete-making authority of the Texas Water
Rights Commission

APR 12 1977

Filed with the Secretary of the Senate

Read, referred to Committee on NATURAL RESOURCES

Reported favorably.

Reported adversely, with favorable Committee Substitute; Committee Substitute
read first time.

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by
 { unanimous consent.
 _____ yeas, _____ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

Read second time and { ordered engrossed.
 { passed to third reading.

Caption ordered amended to conform to body of bill.

Senate and Constitutional 3-Day Rules suspended by vote of
_____ yeas, _____ nays to place bill on third reading and final passage.

Read third time and passed by { a viva-voce vote.
 { _____ yeas, _____ nays.

OTHER ACTION:

Secretary of the Senate

Engrossed

Sent to HOUSE

ENGROSSING CLERK